NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JARED T. WHITTLESEY, Defendant - Appellant.	No. 05-30262 D.C. No. CR-04-05598-001-FDB MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted March 9, 2006[**]
Seattle, Washington

Before: O'SCANNLAIN, SILVERMAN, and GOULD, Circuit Judges.

Jared T. Whittlesey appeals his sentence imposed after his plea of guilty to one count of possession of child pornography in violation of 18 U.S.C. §§ 2252(a)(4)(B) & (b)(2). Whittlesey argues that the parties disputed the applicable

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

United States Sentencing Guidelines range, and that the district court failed to resolve that dispute in violation of Federal Rule of Criminal Procedure 32(i)(3)(B). Because the parties are familiar with the factual and procedural history of this case, we recount it only to the extent necessary to understand our decision.[1]

Rule 32(i)(3) requires the district court at sentencing to resolve all factual disputes between the parties. Fed. R. Crim. P. 32(i)(3). We have held that there is no dispute between the parties requiring resolution under Rule 32 when the defendant "did not challenge the accuracy of any information in the [presentence] report, only inferences drawn from it." *United States v. Rigby*, 896 F.2d 392, 394 (9th Cir. 1990); *see also United States v. Houston*, 217 F.3d 1204, 1208-09 ("[T]he 'essential dispute' [in *Rigby*] concerned 'the appropriate guideline range,' and was not a matter requiring more detailed findings under Rule 32." (quoting *Rigby*, 896 F.2d at 394)).

As in *Rigby*, Whittlesey did not challenge the factual allegations in the presentence report. Rather, he argued that, in light of *United States v. Booker*, 543 U.S. 220 (2005), the total offense level of 26 calculated in the presentence report would result in an unreasonable sentence. He proposed a total offense level of 11,

[1] We review the district court's compliance with Rule 32 de novo. *United States v. Herrera-Rojas*, 243 F.3d 1139, 1142-43 (9th Cir. 2001).

and argued that a resulting sentence would be reasonable. But Whittlesey offered no basis in fact for a total offense level of 11. As in *Rigby*, the dispute here involved the appropriate Guidelines range, not any underlying fact that was challenged. We hold that because Whittlesey did not contest any of the facts used to calculate his sentence, Rule 32 did not require the district court to resolve his dispute about the appropriate Guidelines range in light of *Booker*.

AFFIRMED.